

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 459.103(3), 459.311(2) and 459A.104(1), the Environmental Protection Commission (Commission) proposes to amend Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The Iowa Legislature has directed the Commission to adopt rules requiring confinement feeding operations that are concentrated animal feeding operations (CAFOs) to comply with applicable National Pollutant Discharge Elimination System (NPDES) permit requirements. These rules “shall be no more stringent” than the requirements in U.S. EPA’s rules set out in 40 CFR Parts 122 and 412. See Iowa Code section 459.311(2). Adoption of rules is also required by the Work Plan Agreement (Work Plan) entered into between the Department of Natural Resources (Department) and U.S. EPA on September 11, 2013. The Work Plan requires that the Department recommend to the Commission the adoption of certain rules, including the adoption by reference of “federal regulations necessary to fully implement the NPDES permitting program for confinement CAFOs that discharge to waters of the U.S.”

In light of the reasons above, the Commission is now proposing a rule that incorporates by reference U.S. EPA’s CAFO rule. See Item 7 of the proposed amendments. The Commission also proposes to rescind the outdated term “operation permit” from the confinement feeding operation rules. See Items 2, 5 and 6 of the proposed amendments. The proposed amendments eliminate the need for “operation permits” in the confinement animal feeding operation program.

In addition, the proposed amendments also incorporate the Work Plan requirement that the Department recommend to the Commission that it “adopt by reference federal regulations that fully implement the NPDES permitting program with respect to land application setback and separation distances for open feedlot CAFOs.” The Commission considered this recommendation and is now proposing an amendment that incorporates by reference the federal setback requirements. See Item 8 of the proposed amendments. To ensure equivalency with the open feedlot program, the Commission is proposing this setback requirement for confinement feeding operations as well. See Items 3 and 4 of the proposed amendments.

To assist stakeholders in understanding how the basic NPDES permitting requirements in Chapter 64 apply to the more specific requirements for CAFOs in Chapter 65, the Commission is proposing changes to the existing rule that outlines how these two chapters work in conjunction with each other regarding NPDES CAFO permits. See Item 1 of the proposed amendments.

By letter dated January 23, 2014, U.S. EPA Region 7 informed the Department that the proposed amendments “meet the requirements ... of the Work Plan and ensure that Iowa’s NPDES authorities are consistent with federal requirements.”

Any interested person may make written suggestions or comments on the proposed amendments on or before May 13, 2014. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or e-mail gene.tinker@dnr.iowa.gov.

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

May 6, 2014	6 p.m.	Lime Creek Nature Center 3501 Lime Creek Road Mason City
May 7, 2014	6 p.m.	Clay County Administration Building Boardroom 300 W. 4th Street Spencer
May 8, 2014	6 p.m.	Carroll County Courthouse Meeting Room 114 E. 6th Street Carroll
May 9, 2014	11 a.m.	Wallace State Office Building Fourth Floor Conference Room 502 E. 9th Street Des Moines
May 12, 2014	6 p.m.	Northeast Iowa Community College Dairy Center, Room 115 1527 Highway 150 South Calmar
May 13, 2014	6 p.m.	Washington County Conservation Board Education Center, Marr Park 2943 Highway 92 Ainsworth

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Jobs Impact Statement

After analysis and review of this rule making, the Commission has determined that jobs could be negatively impacted. However, in complying with Iowa Code section 459.311(2), which requires the rules to be no more stringent than the federal regulations, and by including only federal regulations essential to fully implement the NPDES permit program for confinement feeding operations, the Commission has necessarily minimized adverse impacts on jobs.

These amendments are intended to implement Iowa Code chapters 455B, 459, 459A, and 459B. The following amendments are proposed.

ITEM 1. Amend rule 567—64.18(455B) as follows:

567—64.18(455B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in Chapter 65. However, ~~if an animal feeding operation is required to apply for and obtain an NPDES permit, the provisions of this chapter relating concerning NPDES permits which relate~~ to notice and public participation, to the terms and conditions of the permit, to the reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply to animal feeding operations which are required to apply for and obtain an NPDES permit to the extent that such requirements are not inconsistent with 567—Chapter 65.

ITEM 2. Rescind the definition of “Operation permit” in rule **567—65.1(459,459B)**.

ITEM 3. Amend paragraph **65.3(3)“g”** as follows:

g. Designated areas. A person shall not apply manure on land within 200 feet from a designated area, or in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. ~~For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback required by 40 CFR 412.4(c)(5).~~

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

ITEM 4. Adopt the following new paragraph **65.3(3)“h”**:

h. Setback requirements for confinement feeding operations with NPDES permits. The following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5) as amended through July 30, 2012.

ITEM 5. Rescind and reserve rule **567—65.4(459,459B)**.

ITEM 6. Amend subrule 65.5(2) as follows:

65.5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.5(1) exist, the operation shall:

~~a. Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in the following subparagraphs shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged into a water of the state which traverses the operation:~~

- ~~(1) 300 beef cattle.~~
- ~~(2) 200 dairy cattle.~~
- ~~(3) 750 butcher and breeding swine (over 55 lbs.).~~
- ~~(4) 3000 sheep or lambs.~~
- ~~(5) 16,500 turkeys.~~
- ~~(6) 30,000 broiler or layer chickens.~~

~~(7) 150 horses.~~

~~(8) 300 animal units.~~

~~b. Institute~~ institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This ~~paragraph~~ subrule shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.

ITEM 7. Rescind rule 567—65.6(459,459B) and adopt the following new rule in lieu thereof:

567—65.6(459,459B) Concentrated animal feeding operations; NPDES permits. Iowa Code subsection 459.311(2) requires a confinement feeding operation that is a concentrated animal feeding operation as defined in 40 CFR 122.23(b) to comply with applicable NPDES permit requirements pursuant to rules adopted by the commission. The following regulations as amended through July 30, 2012, are adopted by reference:

- 40 CFR 122.21, application for a permit.
- 40 CFR 122.23, concentrated animal feeding operations.
- 40 CFR 122.42(e), additional conditions applicable to specified categories of NPDES permits.
- 40 CFR 122.63(h), minor modification of permits.
- 40 CFR Part 412, concentrated animal feeding operations (CAFO) point source category.

ITEM 8. Amend paragraphs **65.101(6)“b”** and **“c”** as follows:

b. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or, in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. ~~For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback required by 40 CFR 412.4(c)(5).~~

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. CAFOs.

(1) Land application discharges from a CAFO are subject to NPDES permit requirements. The discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent to waters of the United States from a CAFO as a result of the application of that manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where the discharge is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For the purpose of this paragraph, where the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent as specified in 65.112(8), a precipitation-related discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent from land areas under the control of a CAFO is an agricultural storm water discharge.

(2) Setback requirements for open feedlot operations with NPDES permits. The following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5) as amended through July 30, 2012.